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EXAMINER
LOVEL, KIMBERLY M

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2167	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

PTOL-90A (Rev. 04/07)

	Application No.	Applicant(s)
Advisory Action **Before the Filing of an Appeal Brief**	10/667,203	HINSHAW ET AL.
	Examiner	Art Unit
	KIMBERLY LOVEL	2167

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>07 July 2008</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.

   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

      ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☒ The Notice of Appeal was filed on <u>07 July 2008</u>. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

   (a)☐ They raise new issues that would require further consideration and/or search (see NOTE below);

   (b)☐ They raise the issue of new matter (see NOTE below);

   (c)☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.

     NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: <u>1-14</u>.

   Claim(s) withdrawn from consideration: _____.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:

    <u>See Continuation Sheet.</u>

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

/Kimberly Lovel/ Patent Examiner, Art Unit 2167

/Kuen S Lu/
Primary Examiner, Art Unit 2167

Continuation of 11. does NOT place the application in condition for allowance because:
Applicant's arguments filed 7 July 2008 have been fully considered but they are not persuasive.

In regards to applicants' arguments on pages 5-7 of the Remarks under the heading "Finality of the Office Action is Improper," the applicants state "The rejection of claims 1-14 under 35 U.S.C. 103(a) was not necessitated by Applicants' amendment of the claims. In the previous Amendment filed March 14, 2008, the amendments to claim 1 were in form, rather than in substance, to provide proper antecedent basis and to more to more clearly recite the patentable subject matter. They did not add any new claimed subject matter."
The examiner agrees that some of the changes were in form rather than in substance, however, the examiner disagrees that all of the changes were from.
For example, in the fourth element [tuple generator] of the claim, the limitation was altered from stating "being transferred from the output FIFO to the memory of the JPU" to reciting "from being transferred for further processing by the JPU." Even though the purpose of this change was to overcome the issue of lack of antecedent basis for the term "output FIFO," the amendment changed the scope of the claim limitation. Previously, the claim limitation dealt with whether or not to transfer a tuple from a output FIFO to a memory in the JPU and now the claim deals with whether or not to transfer the tuple for the purpose of further processing.
Also, element five [output FIFO device] was amended to delete the output FIFO device's function of forming tuples. Previously, the output FIFO device had the capability of forming and temporarily storing tuples, whereas now it only has the capability of temporarily storing tuples. Therefore, the scope of element five is now considered to be broader than the scope before the amendment.
Furthermore, element one [streaming data interface] was changed from reciting "for receiving" to "arranged to receive" and element four was changed from "for preventing" to "to prevent." Previously, since the phrases included the preposition "for" which is interpreted as indicating intended use. See MPEP 2106 [R-6]: Part II. B.
The subject matter of a properly construed claim is defined by the terms that limit its
scope. It is this subject matter that must be examined. As a general matter, the grammar
and intended meaning of terms used in a claim will dictate whether the language limits the claim scope. Language that suggests or makes optional but does not require steps to be performed or does not limit a claim to a particular structure does not limit the scope of a claim or claim limitation. The following are examples of language that may raise a question as to the limiting effect of the language in a claim:
(A)   statements of intended use or field of use,
(B)   "adapted to" or "adapted for" clauses,
(C)   "wherein" clauses, or
(D)   "whereby" clauses.
The newly added prior art was applied to elements 4 and 5, which were each amended in a manner that changed the scope of the claim. Therefore, the finality of the rejection is maintained.

In regards to applicants' arguments on pages 7 and 8 of the Remarks under the heading "Piecemeal Examination," the examiner disagrees that the addition of the secondary reference of Hausman is considered piecemeal examination since for the reasons stated above, the citation of Hausman was necessitated by amendment.

In regards to applicants' arguments on pages 11-12 of the Remarks under the heading "The Examiner Fails to Meet the Burden of Showing a Prima Facie Case of Obviousness," the examiner respectfully disagrees.

The applicant states "The Office Action relies on Hausman for further limitations of a data engine and a tuple generator. However, Hausman fails to explicitly disclose all the above limitations and does not overcome the deficiencies of Baker. None of the paragraphs [0045], [0048] or [0057] teach a data engine arranged to determine field boundaries in the data from the streaming data interface and process fields to select one or more fields to be assembled into output tuples. Rather, these paragraphs relate to routing of whole data records, not fields within the data records, from the data source to individual users. There is no intrinsic teaching or suggestion in Baker/Hausman to determine field boundaries in a record and process those fields to select one or more of them to be assembled into output tuples, let alone the mention of any tuples.
It is noted that paragraph [0039] of Hausman discloses the insertion of delimiters between records and between individual elements within records. Paragraph [0045] states "A queue 108 receives and forwards the data stream, API 104 reviews data records included within the stream, as for example by reading data type codes included as elements in the records and comparing them to client and/or subclient request lists; and selects for example by assigning suitable identification tags to the records, or by writing them to a cache, buffer or other ..." Since the output data includes delimiters between records and between elements within the records, and the API 104 reviews the stream in order to be able to compare records and elements within the records to client request lists, Hausman is considered to teach the limitation of "a data engine, arranged to receive output data from the data streaming interface, determine field boundaries therein." Paragraph [0048] of Hausman states "... API 104 formats (or re-formats, i.e., maps, records into any form(s) requested by the individual user(s), as for example by re-ordering, deleting, editing, and/or adding elements within the information strings carried by records." Also, according to [0045], only the records that are requested by the users are sent to that particular user [JPU] for processing. According to [0057], selected data records are mapped and distributed via mapped data streams. Therefore, the reformatting of the records assembles the received data into a records with elements that meet the requirement of the user [process fields to select one or more fields to be assembled into output tuples]. These records are then sent via mapped data streams wherein each user receives only requested records. The concepts of deleting elements from records and not sending particular records to particular users is considered to represent the concept of the use or logue decision. The records are considered to represent the tuples since both a tuple and a record equate to a row of data. The record in this instance includes a plurality of elements.
The applicant states "Further, paragraphs [0045], [0048] and [0057] also fail to teach the data engine containing logic arranged to determine whether an output tuple is to be selected for further processing by additional JPUs. There is no mention of any sort of decision-making regarding further processing, let alone a mention of a tuple.   The rejection is also deficient for failing to cite any prior art teaching

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or suggesting "asserting a use or lose decision value according to that determination …"

Paragraph [0065] of Hausman states "Optionally too records identified for specific user are filtered according to criteria established by users. For example, a given user may wish to see only stock offerings related to IBM issues; all other records of type 'stock offering' would be filtered out of that user's data stream." The concept of filtering is considered to be analogous to the concept of a use or lose decision. As mentioned above, the records are considered to represent tuples.

The applicant states "Moreover, Baker/Hausman fails to teach a tuple generator, let alone output tuples. The records of Hausman are not tuples. There is no notion in Baker/Hausman of an output tuple comprised of fields of the source record from the disk that are selected for further processing by the CPU and PSDP generated fields. Foe example, a record retrieved from disk consists of a record header, typically containing more than one header field, and at least one data field, and typically, many data fields for each record. The collection of fields selected for return to the CPU as a result of processing a record is referred to as a tuple."

Hausman's record is considered to meet the requirement of a tuple. A tuple is a row in a database. In this instance, a record is also considered to represent a row since it consists of many elements.

The applicant states "Baker/Hausman also fails to teach at paragraph [0071] an output device arranged to temporarily store tuples prior to conditionally forwarding them to the JPU."

For further clarification, Hausman teaches at paragraph [0070], the concept of a cache for caching records until the user is ready to receive them. This cache is considered to teach a output device. Baker is also considered to teach this limitation at column 18, lines 18-22 and column 30, lines 22-32.

In regards to applicants' arguments on pages 12-14 under the heading "Even if the combination of Baker and Hausman Teaches or Suggests Each and Every Claim Feature, It Would Not be Obvious to so Combine," the applicants state "While that assertion is true with respect to the teachings of Hausman, it still does not indicate why one of ordinary skill in the art would be motivated to modify Baker with the teachings of Hausman. The Office Action is further deficient for failing to indicate how such a combination would have had a reasonable expectation of success."

The applicants argue that the factual inquiries as set forth in Graham v. John Deere requires that the examiner indicate why the combination would have a reasonable expectation of success. The factual inquiries are set forth below.

The factual inquiries set forth in Graham v. John Deere Co., 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1.   Determining the scope and contents of the prior art.
2.   Ascertaining the differences between the prior art and the claims at issue.
3.   Resolving the level of ordinary skill in the pertinent art.
4.   Considering objective evidence present in the application indicating obviousness or nonobviousness.

Furthermore, KSR, 550 U.S. at ___, 82 USPQ2d at 1396 states that "Exemplary rationales that may support a conclusion of obviousness include: … (E) "Obvious to try" - choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success; … (G) Some teaching, suggestion, or motivation in the prior art that would have led

one of ordinary skill to modify the prior art reference or to combine prior art reference teachings to arrive at the claimed invention. See MPEP § 214 3 for a discussion of the rationales listed above along with examples illustrating how the cited rationales may be used to support a finding of obviousness. See also MPEP § 2144 - §2144.09 for additional guidance regarding support for obviousness determinations. As mentioned by the applicant, the examiner utilized rationale (g).

        The motivation provided is that Hausman provides the feature of be able to filter data. It is well known to one of ordinary skill in the art that filtering data decreases the amount of data. In this case, the data is being sent across a network and therefore reducing the amount of information of data would reduce for example, the required bandwidth. The results of decreasing the amount of data sent across a network are well known in the art.

In regards to applicants' arguments on page 15 of the Remarks under the heading "Claim Rejections," the examiner respectfully disagrees that Baker/Hausman fails to disclose the limitations of claims 2-14.

In regards to claims 3 and 4, the applicants state that Baker/Hausman fails to disclose a Transaction Identifier, TID processing and TID processing and data engine logic being executed in parallel.

The cited portion of Hausman are paragraphs [0063] and [0064]. The disclosed routing or address tags are considered to represent the TIDs. The records are processed based on these TIDs and the data engine logic utilizes these IDs to determine which records to forward to which users.

In regards to claim 6, the applicants state "Baker/Hausman does not overcome any of the deficiencies of Baker and fails to disclose not asserting the use or lose decision value when a buffer local to the programmable data streaming processor is full; and means for appending an overflow filter bit to a tuple that indicates a transfer of a tuple that should be ignored. The value of the valid bit used in Baker indicates whether the specific byte is valid or not. Baker does not, however, not assert a valid/lose decision value when a buffer local to the programmable data streaming processor is full and make no use of an overflow filter bit to a tuple that indicates a transfer of a tuple that should be ignored."

If the byte is not valid then the processor is considered to be full.

In regards to claims 9 and 10, the applicant argues that Baker fails to disclose an overflow filter bit.

Hausman discloses parsing the filter which is considered to represent this step.

For the reasons stated above, the rejections of claims 1-14 are maintained.

/Kimberly Lovel/ Patent Examiner, Art **Unit 2167**